Office-Supreme Court, U.S.
FILED
JUL 20 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1997

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONSE TO MOTION TO DISMISS

JOHN C. AMIS, JR.
In Propria Persona
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

QUESTIONS PRESENTED UPON APPEAL

1. Does the due process clause of the fourteenth amendment prohibit the States from denying a citizen Procedural Due Process?

TABLE OF CONTENTS

	Page
Questions Presented Upon Appeal	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Plenary Consideration	
1. THE DUE PROCESS CLAUSE PROHIBITS THE STATE FROM DENYING MEANINGFUL APPELLATE REVIEW GUARANTEED BY STATUTE	4
Conclusion	5
Certificate of Service	6

TABLE OF AUTHORITIES

Cases	Page
Fuentes v. Shevin, 407 U.S.67,80 32 L Ed2d 556,569 (1972)----------	2
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Unions, et al.,334 U.S 809 (1948), Appeal from the Supreme Court of Colorado.----------	3
Simon v. West Haven Housing Authority 399 U.S. 510 (1970) ----------	2

OPINIONS BELOW

There are no opinions from the State Courts.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Appellant incorporates by reference the statement of the case set out in the original brief.

RESPONSE TO MOTION TO DISMISS

1. The impropriety of Motion to Dismiss

It is the position of the Appellant that the lower courts dismissed the petition without giving Appellant an opportunity to be heard.

> The central meaning of procedural due process is that the party whose rights are to be affected are entitled to be heard. Fuentes v. Shevin, 407 U.S. 67,80. 32 L Ed2d 556,569 (1972)

The City of Fort Myers did not notify Appellant of the zoning change and the lower courts refused to review the record.

> The fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind. Fuentes, Supra 573

In Simon V. West, Haven Housing Authority, 399 U.S. 510 (1970), the reason stated in the headnote is,

> "In an action by landlords for summary eviction in which their tenants

> challenged the constitutionality of state statute requiring an appeal bond, the United States Supreme Court will dismiss the appeal where the opinion of the state appellate court below is ambiguous as to whether that court refused to hear the tenants' appeal because it thought the bond requirement left no room for a waiver or because the appeal had been taken for purposes of delay."

In the case at bar there is absolutely nothing ambiguous in the fact that the lower court dismissed the petition without giving petitioner the right to be heard (Appendix A-5).

> In INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNIONS, et al., Appellants v. Denver Milk Producers, Inc., et al., 334 U.S. 809 (1948), Appeal from the Supreme Court of Colorado.

See same case below, 116 Colo 389, 183 P2d 529.

The Court ruled,

> "Because of the inadequacy of the record, we decline to decide the constitutional issues involved. The appeal is dismissed without prejudice to the determination in further proceedings of questions arising under the Federal Constitution. 304 U.S. 809

In this case the record in regard to due process is complete and fully stated in the Appendix pp A-9, A-10, A-11, & A-13.

Appellant has been denied due process on three (3) specific issues.

1. The lower court's refusal to hear the issues and give appellant an opportunity to offer proof.

2. The taking of property by zoning Appellant's property from business to residential without notice.

3. The filing of a lien against the real property of John C. Amis, Jr. to satisfy the alleged liability of Amey, Inc., a Florida Corporation.

It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.

The law many not contain any requirement for a written opinion, but the law does require that the record shall be presented to the court on appeal and shall be subject to review. The lower courts have failed or refused to review the record, which is a denial of due process.

The brief of the appellees is unresponsive to the appellant's opening brief, primarily because the defendants never were required in the lower courts to focus on the issues raised, and so this case has never actually been litigated in any meaningful sense.

Petitioner was simply thrown out of Court.

While the petitioner ultimately bears the burden of proof and of going forward in a civil action, that burden normally is to be met at trial pursuant to the Seventh Amendment. When a defendant submits a pre-trial motion to dismiss, as in this case, the defendant as movant has the burden of proving the absence of any material fact in controversy, Rule 1.420(b) Florida Rules of Civil Proceedure.

Unless the movant has met his burden, which requires him first to identify the relevant questions of law arising from the petition, the petitioner - respondent should be permitted to have his complaint reviewed by the Court after an answer by the Appellees has been submitted to the Court.

Neither the Circuit Court nor the respondents address the constitutional issues raised by the petition in this case, as identified in appellant's opening brief. The respondents successfully deflected the Court's attention to matters not relevant to the petition.

To repeat the assertion in appellant's opening brief, the due process clause prohibits the state from taking property without due process of law.

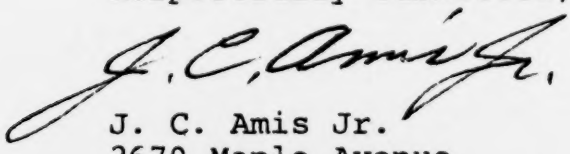
There exist at least two material issues of fact in dispute: Defendant's rezoned petitioner's property without notification and filed a lien against Amis for the alleged liability of Amey, Inc.

The Circuit Court did not address the first question at all and, perhaps, implicitly resolved the second in favor of defendants without an evidentiary hearing and <u>without reading the record</u>.

CONCLUSION

The point is that no court anywhere has reviewed Appellant's case at all. Appellant's initial petition in the Circuit Court was dismissed after a motion hearing and petitioner's claim has never been reviewed under any type of evidentiary hearing.

Respectfully submitted,



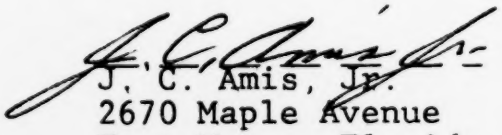
J. C. Amis Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 17 day of July, 1984, mailed three copies of the Response to the Motion to Dismiss, postage prepaid to:

Jim Smith
Attorney General, State of Florida
Department of Legal Affairs
The Capitol
Tallahassee, Florida 33901

James L. Goetz
Post Office Box 6844
Fort Myers, Florida 33911



J. C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266